



May 13, 1999

Mr. John Speed, P.E.
Executive Director
Texas Board of Professional Engineers
P.O. Drawer 18329
Austin, Texas 78760-8329

OR99-1312

Dear Mr. Speed:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124052.

The Board of Professional Engineers (the "board") received a request for "copies of any and all matters" concerning a named individual. It is our understanding that the board has provided the requestor with documents from three closed files regarding the named individual. The board also has one file that is an open complaint file concerning the named individual. You assert that the records in this file are confidential pursuant to article 3271a of the Texas Engineering Practice Act (the "Act") and by board rule.

Section 22A of article 3271a provides as follows:


- (a) The Board shall keep an information file about each complaint filed with the Board relating to a license holder.
- (b) If a written complaint is filed with the board relating to a license holder, the Board, at least as frequently as quarterly, shall notify the parties to the complaint of the status of the complaint until final disposition unless the notification would jeopardize an undercover investigation.
- (c) The Board shall adopt rules that permit the Board to receive and investigate confidential complaints against license holders or any other person who may have violated this Act. The Board shall maintain the confidentiality of the complaint during the investigation of the complaint.

Section 131.171(d) of title 22 of the Texas Administrative Code provides that "[t]he investigation phase of the complaint shall be considered complete for the purposes of maintaining confidentiality when formal charges have been filed."

Thus, the Act requires the board to maintain complaint information as confidential during the investigation stage. By rule, the board has determined that for purposes of maintaining the confidentiality of the complaint information, a complaint investigation is complete when formal charges are filed. Releasing the requested information would identify individuals about whom complaints under the Act have been made, during the investigation phase when complaint information must be maintained as confidential. You inform us that no formal charges have been filed and that the investigation is open. We thus agree that, at this time, the board must maintain the information as confidential.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 124052

cc: Ms. S. Jane Partlett
Akin, Gump, Strauss, Hauer & Feld
300 Convent Street, Suite 1500
San Antonio, Texas 78205